

§ 516.30 Learners, apprentices, messengers, students, or handicapped workers employed under special certificates as provided in section 14 of the Act.

(a) With respect to persons employed as learners, apprentices, messengers or full-time students employed outside of their school hours in any retail or service establishment in agriculture, or in institutions of higher education, or handicapped workers employed at special minimum hourly rates under Special Certificates pursuant to section 14 of the Act, employers shall maintain and preserve records containing the same information and data required with respect to other employees employed in the same occupations.

(b) In addition, each employer shall segregate on the payroll or pay records the names and required information and data with respect to those learners, apprentices, messengers, handicapped workers and students, employed under Special Certificates. A symbol or letter may be placed before each such name on the payroll or pay records indicating that that person is a "learner," "apprentice," "messenger," "student," or "handicapped worker," employed under a Special Certificate.

§ 516.31 Industrial homeworkers.

(a) *Definitions*—(1) *Industrial homemaker* and *homemaker*, as used in this section, mean any employee employed or suffered or permitted to perform industrial homework for an employer.

(2) *Industrial homework*, as used in this section, means the production by any person in or about a home, apartment, tenement, or room in a residential establishment of goods for an employer who suffers or permits such production, regardless of the source (whether obtained from an employer or elsewhere) of the materials used by the homemaker in such production.

(3) The meaning of the terms person, employ, employer, employee, goods, and production as used in this section is the same as in the Act.

(b) *Items required.* In addition to all of the records required by § 516.2, every employer of homeworkers shall maintain and preserve payroll or other records containing the following information

and data with respect to each and every industrial homemaker employed (excepting those homeworkers to whom section 13(d) of the Act applies and those homeworkers in Puerto Rico to whom part 545 of this chapter applies, or in the Virgin Islands to whom part 695 of this chapter applies):

(1) With respect to each lot of work:

(i) Date on which work is given out to worker, or begun by worker, and amount of such work given out or begun;

(ii) Date on which work is turned in by worker, and amount of such work;

(iii) Kind of articles worked on and operations performed;

(iv) Piece rates paid;

(v) Hours worked on each lot of work turned in;

(vi) Wages paid for each lot of work turned in.

(2) With respect to any agent, distributor, or contractor: The name and address of each such agent, distributor, or contractor through whom homework is distributed or collected and the name and address of each homemaker to whom homework is distributed or from whom it is collected by each such agent, distributor, or contractor.

(c) *Homeworker handbook.* In addition to the information and data required in paragraph (b) of this section, a separate handbook (to be obtained by the employer from the Wage and Hour Division and supplied by such employer to each worker) shall be kept for each homemaker. The employer is required to insure that the hours worked and other information required therein is entered by the homemaker when work is performed and/or business-related expenses are incurred. This handbook must remain in the possession of the homemaker except at the end of each pay period when it is to be submitted to the employer for transcription of the hours worked and other required information and for computation of wages to be paid. The handbooks shall include a provision for written verification by the employer attesting that the homemaker was instructed to accurately record all of the required information regarding such homemaker's employment, and that, to the best of his or her knowledge and belief, the information was recorded

accurately. Once no space remains in the handbook for additional entries, or upon termination of the homeworker's employment, the handbook shall be returned to the employer. The employer shall then preserve this handbook for at least two years and make it available for inspection by the Wage and Hour Division on request.

[52 FR 24896, July 1, 1987, as amended at 53 FR 45726, Nov. 10, 1988]

§ 516.32 [Reserved]

§ 516.33 Employees employed in agriculture pursuant to section 13(a)(6) or 13(b)(12) of the Act.

(a) No records, except as required under paragraph (f) of this section, need be maintained by an employer who did not use more than 500 man-days¹ of agricultural labor in any quarter of the preceding calendar year, unless it can reasonably be anticipated that more than 500 man-days of agricultural labor will be used in at least one calendar quarter of the current calendar year. The 500 man-day test includes the work of agricultural workers supplied by crew leaders, or farm labor contractors, if the farmer is an employer of such workers, or a joint employer of such workers with the crew leader or farm labor contractor. However, members of the employer's immediate family are not included. (A "man-day" is any day during which an employee does agricultural work for 1 hour or more.)

(b) If it can reasonably be anticipated that the employer will use more than 500 man-days of agricultural labor in at least one calendar quarter of the current calendar year, the employer shall maintain and preserve for each employee records containing all the information and data required by § 516.2(a) (1), (2) and (4) and, in addition, the following:

(1) Symbols or other identifications separately designating those employees who are

(i) Members of the employer's immediate family as defined in section 13(a)(6)(B) of the Act,

(ii) Hand harvest laborers as defined in section 13(a)(6) (C) or (D), and

(iii) Employees principally engaged in the range production of livestock as defined in section 13(a)(6)(E).

(2) For each employee, other than members of the employer's immediate family, the number of man-days worked each week or each month.

(c) For the entire year following a year in which the employer used more than 500 man-days of agricultural labor in any calendar quarter, the employer shall maintain, and preserve in accordance with §§ 516.5 and 516.6, for each covered employee (other than members of the employer's immediate family, hand harvest laborers and livestock range employees as defined in sections 13(a)(6) (B), (C), (D), and (E) of the Act) records containing all the information and data required by § 516.2(a) except paragraphs (a) (3) and (8).

(d) In addition to other required items, the employer shall keep on file with respect to each hand harvest laborer as defined in section 13(a)(6)(C) of the Act for whom exemption is taken, a statement from each such employee showing the number of weeks employed in agriculture during the preceding calendar year.

(e) With respect to hand harvest laborers as defined in section 13(a)(6)(D), for whom exemption is taken, the employer shall maintain in addition to paragraph (b) of this section, the minor's date of birth and name of the minor's parent or person standing in place of the parent.

(f) Every employer (other than parents or guardians standing in the place of parents employing their own child or a child in their custody) who employs in agriculture any minor under 18 years of age on days when school is in session or on any day if the minor is employed in an occupation found to be hazardous by the Secretary shall maintain and preserve records containing the following data with respect to each and every such minor so employed:

(1) Name in full,

(2) Place where minor lives while employed. If the minor's permanent address is elsewhere, give both addresses,

(3) Date of birth.

(g) Where a farmer and a bona fide independent contractor or crew leader

¹Sections 3(u) and 13(a)(6) of the Fair Labor Standards Act (29 U.S.C. 201 *et seq.*) set forth and define the term "man-day."